

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 03/21/2002
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 01/10/2002.

TITLE: Permits for Incidental Taking of Endangered or Threatened Species

AGENCY FORM NUMBER(S): None

ACTION : APPROVED

OMB NO.: 0648-0230

EXPIRATION DATE: 03/31/2005

BURDEN	RESPONSES	BURDEN HOURS	BURDEN COSTS
Previous	26	1,068	0
New	24	1,048	1
Difference	-2		1
Program Change		0	1
Adjustment		-20	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT
PERMITS FOR INCIDENTAL TAKING OF ENDANGERED
OR THREATENED SPECIES
OMB CONTROL NO. 0648-0230**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) prohibits the taking of endangered species, but provides some exceptions under Section 10. The information collection is required for persons to obtain a permit to take endangered species incidental to an otherwise lawful activity. The regulations at 50 CFR §222.307 set out specific requirements on what information must be provided in order to apply for an incidental take permit, or for an exception from needing such a permit. The regulations contains three sets of information collections: (1) applications for incidental take permits under §222.307(b); (2) applications for certificates of inclusion under §222.307(f)(1); and (3) reporting requirements for issued permits under §222.307(d). In addition, under protective regulations for certain listed species, a group may submit a watershed plan to NMFS for review against guidelines that meet the standards of 223.204. If the plan is adequate, then habitat restoration activities outlined in the plan are exempt from applying for an incidental take permit.

For applications and watershed plans, the required information is used to evaluate the activity proposed in the application. For annual reports, the required information is used to evaluate ongoing activities. All of the information is necessary for NMFS to ensure the conservation of endangered species under the ESA. Each information collection is unique and is not duplicated by NOAA.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

All of the required information is used to evaluate the impacts of the proposed activity on endangered species; for example, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. The analysis involved in making these determinations requires detailed information on the activity, the endangered species and how the activity may affect the animals directly or indirectly through alterations of the habitat.

Incidental Take Permits

See the attached application instructions (2 sets). The instructions for sea turtles were made more specific, and include more explanation, to make it clearer for the applicants. The information required by both sets of instructions follow the regulations and are essentially the same.

I - III. Self-explanatory

IV-V. It is important for management purposes to know what species and stock will be affected by the proposed activity. Due to animals' seasonal habits, such as breeding, the dates and locations of the activity are important to determine the impact to the species. NMFS can provide the applicant with any information that the applicant may not have on the biology, distribution, etc.

VI. A. As a requirement to obtain exception to the ESA for incidental take of an endangered species, there must be a conservation plan developed. The purpose of this plan is to provide some benefit to the species to offset the negative impacts of the incidental take.

B. The ESA also covers habitat for listed species. Animals cannot survive without habitat, so protecting/restoring their habitat is an important part of their conservation and recovery.

C. Because the proposed activity may have an adverse impact on a listed species, NMFS must ensure that all reasonable measures will be taken to minimize that impact. Adequate funding must be available to ensure that the conservation plan can be carried out.

D. NMFS must ensure that alternatives to the proposed action, which would have a lesser/no impact on the species, cannot reasonably be carried out in place of the proposed action. Again, NMFS must ensure that all reasonable measures will be taken to minimize the impact to listed species.

E. NMFS must ensure that the data supplied in the application is valid.

Certificates of Inclusion

An application for a certificate of inclusion, to allow individuals to be included under a general incidental take permit, must include the following:

1. General incidental take permit under which the applicant wants coverage (self-explanatory).
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details) (self-explanatory).
3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season (See explanation under IV and V above).
4. Signed statement that the applicant has read and understood the general incidental take permit and the conservation plan, will apply with the applicable terms and conditions, and will fund the applicable measures of the conservation plan (Self-explanatory, and see explanation under VI A. and C. above).

Permit Reports

The reports required by the incidental take permits are used by NMFS to monitor the taking, to assess the impacts to the species and its habitat, and to monitor compliance with the terms and

conditions of the permit. This information is necessary to ensure that the taking is not appreciably reducing the likelihood of the survival and recovery of the species and for determining whether the terms and conditions of the permit are being complied with, as required by sections 10(a)(2)(B) and (C) of the ESA. The regulations at §222.307(d)(1) state that permits must contain "Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with". The requirements for reports therefore, vary from permit to permit, depending on the permit conditions.

Watershed Plans

There are no formal instructions for Watershed Plans-- other than the regulations themselves, which state that a Watershed Plan must address the following, taken from 222.307(c):

- (i) The status of the affected species or stocks (See explanation for IV-V above);
- (ii) The potential severity of direct, indirect and cumulative impacts on the species or stocks and habitat as a result of the proposed activity (See explanation for VI B and C above);
- (iii) The availability of effective monitoring techniques (To ensure that the actual impact is not different from the expected impact);
- (iv) The use of the best available technology for minimizing or mitigating impacts (See explanation for VI C above); and
- (v) The views of the public, scientists and other interested parties knowledgeable of the species or stocks or other matters related to the application (NMFS is required by the regulations, when issuing an exemption to ESA prohibitions, to solicit review and comment on the proposed activity from experts and the public).

Transfer of Permits

NMFS is currently in the process of changing its Regulations to allow for transfer of certain types of permits. This proposed rule would allow the transfer of permits associated with Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. NMFS proposes this change to the regulations because on two occasions permit holders wanted to sell their property to new owners. The new owners would need to apply for a separate permit to continue implementing actions required from the previous permit. If regulations are revised to allow transfers, NMFS and the new landowners will save time and money by transferring permits instead of issuing new permits.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Application instructions are available over the Internet. The reports may be submitted electronically (over email), but NMFS must receive a signed paper copy of applications.

4. Describe efforts to identify duplication.

Because the information required is for the receipt of benefits (exemption from the ESA Section 10), and reporting on permit activity, the information collection is unique.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection should not have a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the information were not collected, the incidental taking would not be allowed, and the applicant could not lawfully conduct the activity. Annual reporting on permits is necessary to monitor the activity under the permit and the status of the species. Less than annual reporting would hinder NMFS' ability to conserve listed species.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection will be consistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this renewal. No comments were received.

The application instructions were put on the Internet in response to applicants' requests. Feedback received on the application instructions is applied if possible (i.e., if it is consistent with the ESA regulations).

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are given.

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No confidentiality is promised. The information supplied is a matter of public record.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

See table below.

Note: No watershed plans or certificates of inclusions were submitted during the year 2000.

Cost to Public						
	Permit Applications (once per permit)	Certificates of Inclusion	Permit Reports (annually)	Watershed Plans (once per plan)	Transfer of Incidental take permits	TOTAL
Annual # of Respondents	11	0	11	0	2	13
Number of Hours per Response	80	0.5	8	10	40	
Total Hours (Annually)	880	0	88	0	80	1048
Cost per Response (@ \$18/hr)	\$1,440	\$0	\$144	\$0	\$720	\$2,304
Total Cost (Annually)	\$15,840	\$0	\$1,584	\$0	\$1,440	\$18,864
Cost to Government						
Processing: Federal Government Hours per Response	120	0	4		80	
Total Hours (Annually)	1,320	0	44	0	160	1,524

	Permit Applications (once per permit)	Certificates of Inclusion	Permit Reports (annually)	Watershed Plans (once per plan)	Transfer of Incidental take permits	TOTAL
Cost per Response (@ \$18/hr)	\$2,160	\$0	\$0	\$0	\$1,440	\$3,600
Total Cost (Annually)	\$23,760	\$0	\$0	\$0	\$2,880	\$26,640

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

We estimate annual costs of \$660 for copying and mailing. For each permit application and annual report submission, these would average \$20 for reproduction of package. Assuming a mailing cost of \$10 per package, the 11 submissions for permit applications and 11 annual reports would total \$660.

14. Provide estimates of annualized cost to the Federal government.

See table above.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The changes are program changes due to reinstatement of an expired collection.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish the data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

N/A.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

NATIONAL MARINE FISHERIES SERVICE
APPLICATION INSTRUCTIONS FOR PERMITS FOR THE INCIDENTAL TAKE
OF ENDANGERED OR THREATENED SPECIES UNDER THE ENDANGERED SPECIES ACT
In coordination with, but not substituting for 50 CFR 222.22
OMB control number (0648-0230) Expiration date for clearance: 10/31/2001

Information Required in the Application

The Assistant Administrator may issue permits to take endangered or threatened marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA). The information collection associated with the following application instructions is required for the purpose of obtaining such a permit. The information provided will be used to process the incidental take permit in accordance with the ESA, including the solicitation of public comments on the justification of the take of ESA-listed species incidental to proposed activities. The information provided by an applicant in accordance with these instructions is not confidential and is subject to public exposure for comments. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the address below.

An application for a permit should provide all of the following information. The information needed in the application should be presented in the same structure and format shown below to increase processing efficiency. When a question does not apply, do not overlook the category, but indicate Not Applicable (N.A.). In some cases, a brief explanation as to why the category is not applicable may expedite processing. Please note that for the title and closing statement of the application, specific wording is required.

If the applicant represents an individual or a single entity, such as a corporation, the application should be for an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on endangered or threatened marine species, the application should be for a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of 50 CFR 222.22. NMFS estimates a public reporting burden of .5 hour for each certificate of inclusion. The sufficiency of applications will be determined by the Assistant Administrator in accordance with the requirements of 50 CFR 222.22.

Where to Send the Application

The application may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to:

Chief, Endangered Species Division
National Marine Fisheries Service, F/PR3
1315 East-West Highway
Silver Spring, Maryland 20910
Telephone (301) 713-1401, Fax (301) 713-0376

Modifications to Permits

Requests for modifications to incidental take permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Appropriate changes should also be made to the Conservation Plan. Modification requests involving an increased number of animals, additional species, an increased risk to the animals, or a significant change in the location of incidental take are subject to the 30-day public review and are granted or denied at the discretion of the Assistant Administrator for Fisheries.

- I. One of the titles below as appropriate:
 - A. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973.
 - B. Application for a General Incidental Take Permit under the Endangered Species Act of 1973.
- II. Date of the application.
- III. The name, address, telephone, and fax number of the applicant. If the applicant is a partnership, corporate entity or is representing a group or organization, include applicable details.
- IV. A description of the endangered or threatened species, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species.
- V. A detailed description of the proposed activity, including, but not limited to:
 - A. The anticipated dates and duration of the activity.
 - B. The specific location of the activity. Please include latitude/longitude coordinates if possible.
 - C. For a general incidental take application, include an estimate of the total level of activity expected to be conducted.
- VI. The application must include a conservation plan based on the best scientific and commercial data, which specifies:
 - A. The anticipated impact of the proposed activity on the listed species, including:
 - 1. The estimated number of animals of the listed species and, if applicable, the subspecies or population group, and range.
 - 2. The type of anticipated taking, such as harassment, predation, competition for space and food, etc.
 - 3. The effects of the take on the listed species, such as descaling, altered spawning activities, potential for mortality, etc.

- B. The anticipated impact of the proposed activity on the habitat of the species and the likelihood of restoration of the affected habitat.
- C. The steps that will be taken to monitor, minimize, and mitigate such impacts, including:
 - 1. Specialized equipment, methods of conducting activities, or other means.
 - 2. Detailed monitoring plans.
 - 3. Funding available to implement measures taken to monitor, minimize and mitigate impacts.
- D. The alternative actions to such taking that were considered and the reasons why those alternatives are not being used.
- E. A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

An application for a Certificate of Inclusion under a General Incidental Take Permit must include the following:

- 1. General incidental take permit under which the applicant wants coverage;
- 2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details);
- 3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season; and
- 4. Signed statement that the applicant has read and understood the general incidental take permit and the conservation plan, will apply with the applicable terms and conditions, and will fund the applicable measures of the conservation plan.

Endangered Species Act Section 10
Incidental Take Permit Program for Sea Turtles
In coordination with, but not substituting for 50 CFR 222.22
OMB control number (06480230) Expiration date for clearance: 10/31/2001

This document provides guidance on implementation of the Endangered Species Act (ESA) Section 10 incidental take permit program for endangered and threatened sea turtles.

INTRODUCTION

Section 10(a)(1)(B) of the ESA authorizes the National Marine Fisheries Service (NMFS), under some circumstances, to permit the taking of fish and wildlife otherwise prohibited pursuant to Section 9 of the ESA if such taking is "incidental to, and not the purpose of carrying out otherwise lawful activities." Under NMFS regulations (50 CFR 217-222) non-federal parties may apply for a Section 10 incidental take permit to incidentally take threatened or endangered species of sea turtles. As a condition for issuance of a permit, the permit applicant must develop a conservation plan. This plan must specify actions to minimize negative impacts to the species of concern, must identify funding for mitigation efforts, illustrate that there will be no appreciable reduction in the survival of the species and contain adequate assurances that the plan will be fully implemented.

NMFS authorized incidental take permits for sea turtles would generally be for activities that often relate to the taking of individuals, such as by fishing, rather than by habitat degradation. Most marine habitat degradation is subject to Section 7 of the ESA and is not the purview of a Section 10 permit. Habitat degradation on turtle nesting beaches is the jurisdiction of the U.S. Fish and Wildlife Service, who administers the ESA for those areas.

The Assistant Administrator may issue permits to take endangered or threatened marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA). The information collection associated with the following application instructions is required for the purpose of obtaining such a permit. The information provided will be used to process the incidental take permit in accordance with the ESA, including the solicitation of public comments on the justification of the take of ESA-listed species incidental to proposed activities. The information provided by an applicant in accordance with these instructions is not confidential and is subject to public exposure for comments. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the address below.

WHO MAY APPLY Any non-federal entity may apply for a Section 10 incidental take permit. A non-federal entity includes, but is not limited to an individual, business, municipality, fishery organization, or state agency. State agencies, which regulate state fisheries, should apply for individual permits to cover specific fisheries that incidentally take listed species of sea turtles. Although individuals, businesses, municipalities and fishery organizations are eligible to apply for an incidental take permit, state agencies have the appropriate resources to develop conservation plans to institute actions that minimize negative impacts to the species of concern.

Individual Incidental Take Permit. If the applicant represents an individual or a single entity, such as a state or corporation, the application would be for an individual incidental take permit.

General Incidental Take Permit. If the applicant represents a group or organization whose members conduct similar activities in the same geographical area with similar impacts on endangered or threatened sea turtles, the application would be for a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity would have to have a certificate of inclusion (described later).

WHERE TO SEND THE APPLICATION

The application may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to:

Chief, Endangered Species Division
National Marine Fisheries Service, F/PR3
1315 East-West Highway
Silver Spring, Maryland 20910
Telephone (301) 713-1401, Fax (301) 713-0376

APPLICATION REQUIREMENTS

Cover Letter

Include the Following Information:

1. Type of Permit.
 - A. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973.
 - B. Application for a General Incidental Take Permit under the Endangered Species Act of 1973.
2. Date of the application.
3. Name, address and telephone number of the applicant. If the applicant is a partnership, corporate entity or is representing a group or organization, include applicable address details.
4. Description of each species of ~~Endangered~~ or threatened sea turtle impacted by the activity, by common and scientific name; description of the status, geographical distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of each species.
5. Detailed description of the activity (fishery season):
 - A. Anticipated dates and duration of the activity.
 - B. Specific location of the activity and fishery effort in that area.
 - C. For a general incidental take application, an estimate of the total level of expected fishery effort.
 - D. Other relevant information (e.g. gear description).

Conservation Plan

NMFS regulations require that a Conservation Plan be based on the best scientific and commercial data. Accordingly, a Conservation Plan must emphasize techniques, gear-types, and general practices to mitigate takes. The Conservation Plan may involve development of new gear-types or modification of fishing practices.

Include the Following Information:

1. Anticipated impact of the activity on the listed species of sea turtle(s), including:
 - A. The estimated number of animals impacted, their geographic range and, if applicable, the subspecies or population group.

- B. Type of anticipated impact, such as capture, harassment, predation, competition for space and food, nature of injury, etc.
 - C. Effects of impact on the listed species, such as descaling, altered reproductive activities, potential for mortality, effects of repeated submergence, etc.
- 2. Anticipated impact of the activity on the habitat of the species and the likelihood of restoration of the affected habitat.
- 3. Steps that will be taken to monitor, minimize, and mitigate such impacts, including:
 - A. Detailed monitoring plans (e.g. observer programs).
 - B. Detailed enforcement plans (e.g. monitoring Turtle Excluder Device compliance).
 - C. Specialized equipment, methods of conducting activities, or other mitigation techniques.
 - D. Detailed funding plan to implement measures taken to monitor, minimize and mitigate impacts.
- 4. Alternatives to the activity considered and reasons why those alternatives are not being used.
- 5. A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.
- 6. Other measures the Assistant Administrator of NMFS may require as necessary or appropriate for the purposes of the plan (Section 10(a)(2)(A)).

PERMIT ISSUANCE CRITERIA

In order to issue a permit, NMFS must find that the applicant will effectively monitor the activity and institute means to minimize and mitigate the impact on sea turtles, and that the incidental taking will not reduce the likelihood of survival of the species or hinder its recovery. NMFS also requires assurance that the conservation plan will be implemented and that any other required measures will be implemented.

The following criteria are considered for issuance:

- 1. Status of the stock and/or species to be incidentally taken;2. Likely direct and indirect impacts of the activity on sea turtles;
- 3. Availability and effectiveness of monitoring and enforcement programs;
- 4. Use of the best available technology to minimize and mitigate impacts; and

5. Public comments received during the 30-day public notice and comment period.
6. Adequate funding for the Conservation Plan.
7. Taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

An issued permit would:

1. Require regular reporting and rights of inspection;
2. Identify species and number of animals allowed to be incidentally taken;
3. Specify the authorized method of incidental taking;
4. Require procedures for captured sea turtles (i.e. resuscitation techniques, disposal);
5. Potentially impose administrative fees;
6. Establish duration of the permit; and
7. Specify any other terms or conditions that the Assistant Administrator of NMFS identifies necessary and appropriate.

Incidental take permits are subject to the requirements of the National Environmental Policy Act. Because issuance of the permit is a Federal action, NMFS will conduct a consultation for each permit as required by section 7 of the Endangered Species Act.

CERTIFICATES OF INCLUSION

When NMFS authorizes a general incidental take permit, individuals conducting the activity covered by the general permit must obtain certificates of inclusion. For example, if NMFS issues a general incidental take permit to a fishery organization for a coastal gillnet fishery, the owner or operator of a gillnet vessel who wishes to operate under that permit must apply to NMFS for a certificate of inclusion. NMFS estimates a public reporting burden of .5 hour for each certificate of inclusion.

An application for a certificate of inclusion must include the following:

1. General incidental take permit under which the applicant wants coverage;
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details);3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season; and
4. Signed statement that the applicant has read and understood the general incidental take permit and the conservation plan, will apply with the applicable terms and conditions, and will fund the applicable measures of the conservation plan.

PERMIT MODIFICATIONS

Requests for modifications to incidental take permits must address all applicable sections of these instructions, including a detailed description of all proposed changes. Appropriate changes must also be made to the Conservation Plan. Modification requests involving an increased number of animals, additional species, an increased risk to the animals, or a significant change in the location of the activity are subject to the 30-day public review and may be granted or denied the permit modification at the discretion of the Assistant Administrator for Fisheries.

PERMIT VIOLATIONS, SUSPENSIONS, AND REVOCATIONS

If a permit or certificate holder is not complying with the terms and conditions of the permit, NMFS may suspend or revoke the permit or certificate. If a permit is revoked, then the permitted activity that incidentally takes threatened or endangered species, would lose authorization. In some cases, the state itself would be the permittee and would be in violation of the ESA in the event that individual vessels do not comply with the terms of the permit.

COORDINATION WITH SECTION 6 AGREEMENTS

NMFS anticipates that most of the Section 10 incidental take permits will address activities that occur on a state-wide basis. NMFS will coordinate activities between state Section 10 permit applications and state Section 6 cooperative agreements. Both Conservation Plans and cooperative agreements seek to establish effective mechanisms outside the federal government for conservation of listed and even non-listed species. It is possible that Conservation Plans could be incorporated into cooperative agreements of those states.

which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraph (a)(2) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised effective Mar. 23, 1999, with the exception of § 222.305 paragraph (a), which contains information collection requirements and will not be effective until approval has been given by the Office of Management and Budget.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtain-

ing a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a

corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

- (1) The type of application, either:
 - (i) Application for an Individual Incidental Take Permit under the Act; or
 - (ii) Application for a General Incidental Take Permit under the Act;
- (2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;
- (3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;
- (4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;
- (5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
 - (i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;
 - (ii) The anticipated impact of the proposed activity on the habitat of the

species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

- (i) The status of the affected species or stocks;
- (ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;
- (iii) The availability of effective monitoring techniques;
- (iv) The use of the best available technology for minimizing or mitigating impacts; and
- (v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

- (i) The taking will be incidental;
- (ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
- (iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- (iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and
- (v) There are adequate assurances that the conservation plan will be funded and implemented, including any

measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, in-

cluding the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would ap-

preciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

(i) Application for permit for scientific purposes under the Act; or

Sec. 1539. Exceptions

● (a) Permits

- (1) The Secretary may permit, under such terms and conditions as he shall prescribe -
 - (A) any act otherwise prohibited by section [1538](#) of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j) of this section; or
 - (B) any taking otherwise prohibited by section 1538(a)(1)(B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
- (2)
 - (A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies -
 - (i) the impact which will likely result from such taking;
 - (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
 - (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
 - (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.
 - (B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that -
 - (i) the taking will be incidental;
 - (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
 - (iii) the applicant will ensure that adequate funding for the plan will be provided;
 - (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
 - (v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.
 - (C) The Secretary shall revoke a permit issued under this paragraph if he finds that

the permittee is not complying with the terms and conditions of the permit.

● (b) Hardship exemptions

- (1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section [1533](#) of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section [1538\(a\)](#) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section [668cc-3](#) [\[1\]](#) of this title; and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.
- (2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:
 - (A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;
 - (B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or
 - (C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.
- (3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

● (c) Notice and review

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the

Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

- (d) Permit and exemption policy

The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section [1531](#) of this title.

- (e) Alaska natives

- (1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by -
 - (A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or
 - (B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.
- (2) Any taking under this subsection may not be accomplished in a wasteful manner.
- (3) As used in this subsection -
 - (i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and
 - (ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.
- (4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may

prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section [1373](#) of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

- (f) Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separability; renewal of exemption; expiration of renewal certification
 - (1) As used in this subsection -
 - (A) The term "pre-Act endangered species part" means -
 - (i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or
 - (ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.
 - (B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.
 - (2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:
 - (A) The prohibition on exportation from the United States set forth in section [1538](#)(a)(1)(A) of this title.
 - (B) Any prohibition set forth in section [1538](#)(a)(1)(E) or (F) of this title.
 - (3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application -
 - (A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

- (B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;
 - (C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and
 - (D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.
- (4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify -
 - (A) any prohibition in section [1538](#)(a) of this title which is exempted;
 - (B) the pre-Act endangered species parts to which the exemption applies;
 - (C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and
 - (D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.
- (5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth -
 - (A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and
 - (B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section [1533](#)(f)(2)(A)(i) of this title.
- (6)
 - (A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section [1538](#)(a)(1)(F) of this title.

- (B) In the event that this paragraph is held invalid, the validity of the remainder of this chapter, including the remainder of this subsection, shall not be affected.
 - (7) Nothing in this subsection shall be construed to -
 - (A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section [1538](#)(a) of this title prior to July 12, 1976; or
 - (B) immunize any person from prosecution for any such act.
 - (8)
 - (A)
 - (i) [\[2\]](#) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on October 7, 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on October 7, 1988.
[\[2\]](#) So in original. No cl. (ii) has been enacted.
 - (B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.
 - (C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.
 - (D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.
- (g) Burden of proof

In connection with any action alleging a violation of section [1538](#) of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.
- (h) Certain antique articles; importation; port designation; application for return of articles
 - (1) Sections [1533](#)(d) and 1538(a) and (c) of this title do not apply to any article which -
 - (A) is not less than 100 years of age;
 - (B) is composed in whole or in part of any endangered species or threatened species listed under section [1533](#) of this title;
 - (C) has not been repaired or modified with any part of any such species on or after December 28, 1973; and

(D) is entered at a port designated under paragraph (3).

- (2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).
- (3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), United States.
- (4) Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which -

- (A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section [1533](#) of this title;

- (B) was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section [1540](#) of this title; and

(C) is in the custody of the United States on November 10, 1978; may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

● (i) Noncommercial transshipments

Any importation into the United States of fish or wildlife shall, if -

- (1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;
- (2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;
- (3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;
- (4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity, be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter while such fish or wildlife remains in the control of the United States Customs Service.

■ (j) Experimental populations

- (1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.
 - (2)
 - (A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.
 - (B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.
 - (C) For the purposes of this chapter, each member of an experimental population shall be treated as a threatened species; except that -
 - (i) solely for purposes of section [1536](#) of this title (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section [1533](#) of this title; and
 - (ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.
 - (3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.
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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[I.D. 072701E]****Proposed Information Collection; Comment Request; Permits for Incidental Taking of Endangered or Threatened Species****AGENCY:** National Oceanic and Atmospheric Administration (NOAA).**ACTION:** Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 1, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lamont Jackson, F/PR3 Room 13632, 1315 East-West Highway, Silver Spring MD 20910-3282 (phone 301-713-1401, ext. 150).

SUPPLEMENTARY INFORMATION:**I. Abstract**

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (1) applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than

requiring each entity to apply for and receive a permit. There are currently no general incidental take permits, and no certificates of inclusion, and none are expected in the next 3 years.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, in an interim rule for protection of listed coho salmon, NMFS recognized certain exceptions to that prohibition, including one for restoration actions taken in accord with approved watershed action plans in Oregon or California. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

II. Method of Collection

Permit or certificate applicants must submit an application to NMFS, including all appropriate information listed on the instructions. These instructions are a user-friendly version of the requirements at 50 CFR 222.22 (b) for applications for incidental take permits.

Once issued, the permit requires that permit holders submit an annual report on activities. These reports must include information on: the activity causing incidental take, any endangered species taken (species, dates, location, and condition of animal), and the status of implementing a conservation plan to offset the impact to the species.

For watershed plans, a watershed council or other local group would submit its watershed plan to NMFS (and the state) for review against state guidance which meets the standards of 50 CFR 222.22 (c). If the plan is found consistent with the state guidance, the group would not need to apply for a section 10 permit for any incidental take that might be associated with a restoration action called for in the plan. No annual or other reporting is associated with the restoration activity exception.

III. Data

OMB Number: 0648-0230.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal government.

Estimated Number of Respondents: 11.

Estimated Time Per Response: 80 hours for a permit application (including Habitat Conservation Plans), 30 minutes for an application for a Certificate of Inclusion; 8 hours for a permit report, and 10 hours for a watershed plan.

Estimated Total Annual Burden Hours: 880.

Estimated Total Annual Cost to Public: \$15,840.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 27, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 01-19357 Filed 8-1-01; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[I.D. 072701F]****Proposed Information Collection; Comment Request; U.S. Fishermen Fishing in Russian Waters**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.